

NASA ADVISORY COUNCIL  
National Aeronautics and Space Administration  
Washington, DC 20546  
Hon. Harrison H. Schmitt, Chairman

May 18, 2007

The Honorable Michael D. Griffin  
Administrator  
National Aeronautics and Space Administration  
Washington, DC 20546

Dear Dr. Griffin:

In addition to recommendations from the Workshop on Science Associated with the Lunar Exploration Architecture, transmitted to you separately, the NASA Advisory Council agreed in our meeting of April 19, 2007 to forward two additional recommendations. One is related to International Traffic in Arms Regulations (ITAR) and the other is related to Audit Plans for the Agency.

A summary of each recommendation is given below with background for each enclosed with this message.

- 1) **Aeronautics and Space Export Control Authority:** Should current efforts by NASA to obtain an exemption from the ITAR not succeed in the near term, the Council recommends that NASA seek amendment of the existing Executive Order regarding delegation of authority to implement the Arms Export Control Act (AECA). Specifically, NASA should seek delegation of Presidential authority that would allow the agency to implement export control policies and procedures that would enable fulfillment of NASA's Presidential and Congressionally-authorized mission. In any event, NASA should communicate regularly on its activities to Directorate of Defense Trade Controls of the Department of State (DDTC) by means of institutionalized reporting responsibilities.
- 2) **Audit Plan:** The Council recommends that the Administrator request the Office of Inspector General submit to the Agency an annual audit plan, inclusive of audit objectives, major milestones and schedule.

If there are any questions on these recommendations, please contact me.

Best Regards,

SIGNED 18 MAY 2007

Harrison H. Schmitt  
Chairman

Enclosures

NASA Advisory Council  
Council Recommendation  
**Tracking Number: NAC-07-1**

Lead Member: Mr. Howard Stanislawski, Audit and Finance Committee

Date of Public Deliberation: April 19, 2007

Date of Transmission: May 18, 2007

Short title of the Recommendation

Aeronautics and Space Export Control Authority

Short description of the Recommendation

The Council strongly supports the efforts thus far undertaken by NASA to obtain an exemption from the International Traffic in Arms Regulations (ITAR) so as to enable NASA to expand its existing export control capability and enable direct international interactions that will facilitate NASA's critical tasks in implementing the Vision for Space Exploration (VSE) and other NASA programs. Should current efforts by NASA to obtain an exemption from the ITAR not succeed in the near term, the Council recommends that NASA seek amendment of the existing Executive Order regarding delegation of authority to implement the Arms Export Control Act (AECA). Specifically, NASA should seek delegation of Presidential authority that would allow the agency to implement export control policies and procedures that would enable fulfillment of NASA's Presidential and Congressionally-authorized mission. In any event, NASA should communicate regularly on its activities to Directorate of Defense Trade Controls of the Department of State (DDTC) by means of institutionalized reporting responsibilities.

Major reasons for the Recommendation

General: The Council notes that both an ITAR exemption and delegation to NASA of authority to implement its own export control policies and procedures would be fully consistent with the existing statutory authority embodied in 22 U.S.C. §2778(b)(2). As a consequence of either of these approaches being put into effect, under the authority of its export control office, NASA would be able to establish a rigorous structure that would allow for effective communications and implementation of export control-related aeronautical and space programs involving United States' activities under NASA's purview, including relations with the United States' International Partners and their space agencies and contractors located in the United States and International Partner countries. Through such a NASA-based export control program, under the rubric of existing law, and in cooperation with DDTC, the VSE could be pursued in the most effective, expeditious, and productive manner.

Analysis: The Council and several of its committees have reviewed relevant materials relating to the AECA, 22 U.S.C. §§2778 et seq., as implemented through the ITAR, 22 C.F.R. Chapter 1, Subchapter M. Parts 120-130. These materials include the recent International Space Station (ISS) Independent Safety Task Force report. The Council believes that current implementation of the AECA through the ITAR gives rise to significant obstacles to effective pursuit of President Bush's VSE. The Council further believes that these obstacles are not required by statute and can be remedied through effective cooperation between NASA and other agencies of the United States Government, without requiring any statutory changes. In this short summary paper, the Council wishes to lend its support to initiatives that have already begun within the

Administration that would enable full compliance with United States export control law and policy, while enabling NASA to pursue the VSE and deal with urgent needs of the space program.

The Council understands that:

- (1) Effective participation by International Partners of the United States in the VSE has been constrained and adversely affected as a result of ITAR-related delays and restrictive conditions placed upon VSE-related activities.
- (2) Ongoing participation by United States contractors in ISS-related technical interchanges have been and continue to be adversely affected by restrictive conditions imposed upon such interchanges. The United States' International Partners view such interchanges as already enabled through Government-to-Government agreements. For example, urgent needs relating to anomaly resolution on the ISS have been and continue to be adversely affected by constraints imposed through administration of the ITAR. There are substantial concerns that similar problems may affect the European Space Agency's Automated Transfer Vehicle (ATV) operations.
- (3) While NASA and the DDTC have developed a working relationship that at times is able to facilitate a resolution of some of these problems, it is apparent that such contacts alone cannot serve to timely resolve all of the development and operational issues, including time-critical operational issues, that have arisen and are expected to arise in the future.
- (4) NASA is committed to working with all United States Government agencies to remedy the current situation and enable effective cooperative implementation of all aspects of the VSE, while ensuring comprehensive compliance with all laws, regulations, and policies regarding export control and nonproliferation and safeguarding the national security and foreign policy goals of the United States.

The Council has reviewed relevant sections of the AECA and notes that 22 U.S.C. §2778(b)(2) states that “no license shall be required for exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.” (Emphasis added). The plain meaning of this provision of the AECA indicates that, as long as exports are made by or for NASA, for its official use or in fulfillment of its mission, licenses should not be required.

The Council also understands that, on the other hand, implementation of the AECA has been delegated to the State Department and thus to DDTC. In this regard, DDTC has taken the position that, other than through limited exceptions, such as the ones found at ITAR 126.4, regarding temporary exports by or for United States Government agencies, and 126.6(c), relating to the Foreign Military Sales Program, licenses are required for exports of many items and technical data of the sort utilized on major NASA programs, even though such exports are made on behalf of the United States Government. This position includes activities relating to VSE, such as activities on the ground in support of the ISS, and, incongruously, even extends to urgent flight safety-related situations involving the need for immediate interactions among U.S. contractors and International Partners and their contractors for ISS anomaly resolution.

The Council notes and endorses the recent recommendations of the ISS Independent Safety Task Force, which called on (1) the Department of State to grant immediate relief in the form of an exemption that would allow NASA contractors direct interaction with the International Partners and their contractors to facilitate and accommodate engineering and safety reviews, data exchanges, program management interactions and flight operations, including anomaly resolution; and (2) the Executive and Legislative Branches of the United States Government to conduct a comprehensive and thorough review of government policies and procedures related to the ITAR and related export controls, as soon as practical.

In addition to the concerns identified in the ISS Independent Safety Task Force report, the Council expresses its concern that other elements of the VSE as well as the current execution of other NASA programs, including the Space science program, are at risk by virtue of continued implementation of the current ITAR regime.

NASA Advisory Council  
Council Recommendation  
**Tracking Number: AF-07-1**

Committee name:                      Audit and Finance Committee

Chair:                                      Mr. Robert Hanisee

Date of public deliberation:   April 19, 2007

Date of transmission                May 18, 2007

Short title of the Recommendation

Office of Inspector General submission of Annual Audit Plan

Short description of the Recommendation

The Council recommends that the Administrator request the Office of Inspector General submit to the Agency an annual audit plan, inclusive of audit objectives, major milestones and schedule.

Major reasons for the Recommendation

The Agency's receipt of annual audit plan will outline to nature and scope of the proposed audit, thereby facilitating the auditees pre-planning (allocation of resources, workload management, staff assignments) and monitoring of the annual financial statement audit process.

Outline the consequences of no action on this recommendation

Inefficient use of limited Agency resources to support audit.